



STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION  
1263 S. Stewart Street  
Carson City, Nevada 89712

BRIAN SANDOVAL  
Governor

December 5, 2011

SUSAN MARTINOVICH, P.E., Director

In Reply Refer to:

*Via Electronic Filing*  
Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, D.C. 20554

Re: Ex Parte Notice, Docket No. PS 06-229; *Request for Waiver Filed By The Nevada Department of Transportation, Las Vegas Metropolitan Police Department, Washoe County Sheriff's Office, Washoe County Regional Communication System and NV Energy (SONNet).*

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1200, *et seq.*, I hereby notify the Federal Communications Commission ("Commission") of the following ex parte communication in the above-referenced proceeding. On December 1, 2011, Chris Perry, Director of the Nevada Department of Public Safety, Chris Magenheimer, Battalion Chief of the North Lake Tahoe Fire Protection District, Craig Harrison, Director of the Washoe County Regional Communication System, and I (collectively "the SONNet representatives") spoke with Messrs. Genaro Fullano and Robert Pavlak of the Public Safety and Homeland Security Bureau (PSHSB).

**1. SONNET is Ready to Begin Development of its Network Prior to Deciding on Allowance of the PSWBN by Non-Governmental Entities.**

In the meeting, the SONNet representatives recognized that the Commission has limited use of a PSWBN built pursuant to a waiver to "traditional public safety entities," pending final determination of the scope of Section 337 of the Communications Act, in its Waiver Order.<sup>1</sup> The SONNet representatives made clear that the Commission's discussion of how various governmental uses, including those of departments of transportation, airports, and city planning agencies are appropriate with regard to utilizing the PSWBN, is extremely useful.<sup>2</sup> This guidance will drive SONNet's continued efforts to develop a governance structure - an ongoing initiative funded through a Federal Department of Homeland Security grant.

The SONNet representatives made clear that, with these strong, decisive guidelines, the fact that SONNet has requested that non-governmental entities utilize the PSWBN should not delay approval of the SONNet Waiver Request. As the Commission has stated that it has not yet determined whether non-governmental uses will be allowed on the PSWBN, SONNet believes that

<sup>1</sup> See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145, 5147, ¶ 7 (2010) (Waiver Order).

<sup>2</sup> See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Fourth Report and Order*, FCC 11-113, ¶¶ 26-28 (2011) (Fourth Waiver Order).

the Commission need only reiterate that fact and confine SONNet use to those by governmental entities as detailed under its Waiver Order and Fourth Waiver Order.

Under such a decision, SONNet is prepared to begin developing a PSWBN for and under the direction of the State of Nevada.

## **2. An Immediate Waiver Grant From the Commission Will Prompt Funding Support from the State of Nevada.**

The SONNet representatives stated that, under budget methodologies in the State of Nevada, funding will not be available from the State until the Commission grants the SONNet Waiver Request. At that time, the SONNet representatives are informed, the State of Nevada is prepared to prioritize funding from multiple agencies for the development of the PSWBN pursuant to Commission guidelines and under the direction of the Nevada Department of Public Safety and the Nevada Department of Transportation. To be clear, under the current SONNet Waiver Request, the State of Nevada, its agencies, and its officials will control the license through its Department of Transportation.

In fact, it is clear that, pursuant to rapid approval of the Waiver Request, the State of Nevada has established interoperability and the PSWBN as a premier priority for funding. The SONNet representatives can verify that Nevada Department of Transportation and other State agencies are currently establishing program funding priorities for the year, and must finalize these priorities in the very near future. To put PSWBN funding as a top-level priority for FY 2012 among these agencies and at the Governor's level, a Commission Waiver is required. Therefore, in order for the State of Nevada to begin funding and developing the PSWBN in FY 2012, a Commission Waiver must be acquired in the coming weeks.

## **3. Commission Precedent Speaks to Immediate Approval of the SONNet Waiver Request.**

The SONNet representatives made clear that it appreciates the Commission's dedication to carefully evaluating all aspects of how the nationwide, interoperable PSWBN is developed and used. We also agreed with the Commission that it may act on waiver requests "in advance of a resolution of the larger rulemaking, and ... that public safety must act expeditiously to take advantage of current and imminent development of 4G technology by commercial providers..."<sup>3</sup> Moreover, SONNet shares the Commission's disagreement with, "the suggestion that we cannot proceed with consideration of these waivers before finishing the larger rulemaking proceeding."<sup>4</sup> This argument applies as well now to SONNet as it did to the 21 Waiver jurisdictions granted authority to build out PSWBNs approximately 18 month ago. The SONNet representatives noted that the State of Nevada should not be forced to await final determinations on non-governmental use to begin reaping the public benefits of PSWBN deployment.

Further, recent approval of the State of Texas Waiver Request establishes precedent for expedited Waiver Request approval based upon the possibility of loss of funding for network development. In September 2010, the State of Texas (Texas) sought a waiver seeking early deployment of a

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<sup>3</sup> Waiver Order at ¶ 10.

<sup>4</sup> *Id.* at ¶ 11.

statewide PSWBN.<sup>5</sup> In February 2011, Texas asked the Commission to expedite its petition due to the fact that Harris County, Texas secured \$10 million in federal funding for the PSWBN that needed to be expended or encumbered by June 30, 2011. The PSHSB then granted the Texas Expedition Request in large part “to preserve the specific funding availability identified for its constituent jurisdiction, Harris County, [Texas] which has secured \$10 million in federal funding that must be expended or encumbered by June 30, 2011.”<sup>6</sup>

SONNet faces a funding crisis similar to that of Texas. As noted above, the State of Nevada is prepared to prioritize funding for the PSWBN in FY 2012, but can only do so if a Waiver is granted in the coming weeks. Without having the Waiver by this time, State funding opportunities will not arise until the next fiscal year, if at all. Accordingly, SONNet requests immediate grant of its Waiver Request.

For these reasons, I urge the Commission to immediately approve the SONNet Waiver Request, pursuant to all current requirements and use limitations as established by the Commission. SONNet greatly appreciates the Commission’s consideration and looks forward to continuing its work together.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard J. Nelson", with a long horizontal flourish extending to the right.

Richard J. Nelson, P.E., F.ASCE  
Assistant Director, Operations

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<sup>5</sup> See State of Texas Petition for Expedited Waiver, PS Docket No. 06-229 (filed Sept. 17, 2010) (Texas Waiver). See also Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, Order, 25 FCC Rcd 5145 (2010) (Waiver Order); Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, Order, 25 FCC Rcd 17156 (PSHSB Dec. 2010) (Interoperability Order).

<sup>6</sup> Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, Order Granting the State of Texas Petition for Early Deployment of a Statewide Public Safety Wireless Broadband Network in the 700 MHz Public Safety Broadband Spectrum, ¶ 1 (May 12, 2011).